

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Sudeen G. Kelly.

San Diego Gas & Electric Company,
Complainant,

Docket Nos. EL00-95-166

v.

Sellers of Energy and Ancillary Services
into Markets Operated by the California
Independent System Operator and the
California Power Exchange,
Respondents.

Investigation of Practices of the California
Independent System Operator and the
California Power Exchange

Docket Nos. EL00-98-152

ORDER DENYING REHEARING AND PROVIDING GUIDANCE

(Issued March 28, 2006)

1. In this order, we address the California Parties’¹ request for rehearing of a September 20, 2005 Order,² in which we acted on compliance filings detailing parties’ emissions costs incurred during the period from October 2, 2000 through June 20, 2001 (Refund Period). Specifically, we deny the California Parties’ request for rehearing, in which it challenges the Commission’s determination regarding a compliance filing submitted by the Los Angeles Department of Water and Power (LADWP).³

¹ The California Parties are the People of the State of California, *ex rel.* Bill Lockyer, Attorney General, the California Electricity Oversight Board, the California Public Utilities Commission, Pacific Gas and Electric Company, and Southern California Edison Company.

² *San Diego Gas & Electric Company v. Sellers of Energy and Ancillary Services*, 112 FERC ¶ 61,323 (2005) (September 20 Order).

³ On September 6, 2005, the Ninth Circuit Court of Appeals issued an opinion holding “that FERC does not have refund authority over wholesale sales made by

2. Additionally, in response to the request for clarification included in the California Independent System Operator Corporation's (CAISO's) Status Report, we will provide guidance on how emissions costs offsets should be allocated to market participants. Specifically, we find that the CAISO should allocate the approved emissions costs offsets to all control area gross load.

I. Request for Rehearing

A. Background

3. The September 20 Order, among other things, addressed a compliance filing submitted by the LADWP. The LADWP's compliance filing⁴ contained recalculations of its emissions costs offset. The LADWP's revised emissions costs offset amounted to \$8,630,834; that was, \$1,944,232 for RECLAIM Trading Credits (RTC) purchases and \$6,686,602 related to the civil penalty from the South Coast Air Quality Management District (SCAQMD) settlement. To arrive at these numbers, the LADWP, pursuant to Commission orders,⁵ factored into its per-unit costs zero-cost RTCs that were retained in years 2000 and 2001 and not used for native load customers. The LADWP also included in the emissions costs offset the amount of the civil penalty assessed to the LADWP by the SCAQMD. Finally, the LADWP included emissions costs associated with mitigated intervals.

4. On October 20, 2005, the California Parties filed a request for rehearing of the Commission's acceptance for filing of the LADWP's compliance filing. On December 19, 2005, the California Parties filed an errata to its request for rehearing explaining that their original request for rehearing did not comply with Order No. 663⁶ to the extent that the Statement of Issues failed to include citations to representative precedent.

governmental entities and non-public utilities." *Bonneville Power Administration v. FERC*, No. 02-70262, slip op. at 12271 (9th Cir. Sept. 6, 2005). The instant order does not address that opinion, as any party may file a petition for rehearing of the Court's opinion within 45 days of its issuance, Fed. R. App. P 40(a)(1), and the Court's mandate will not issue until seven calendar days after the time to file a petition for rehearing expires, or seven calendar days after entry of an order denying a timely petition for rehearing, whichever is later, Fed. R. App. P 40(b).

⁴ LADWP's compliance filing consists of two submissions: a March 21, 2005 compliance filing and a June 11, 2005 supplemental filing.

⁵ *San Diego Gas and Electric Company*, 102 FERC ¶ 61,317 (March 26 Order), *order on reh'g*, 105 FERC ¶ 61,066 (2003) (October 16 Order).

⁶ Revision of Rules of Practice and Procedure Regarding Issue Identification, Order No. 663, 70 Fed. Reg. § 55,723 (September 23, 2005), FERC Stats. & Regs. ¶ 31,193 (2005) (Order No. 663). On March 17, 2006, the Commission issued Order

B. The California Parties' Position

5. The Statement of Issues included in the California Parties' rehearing request identifies the following issues: (1) is the Commission's acceptance of LADWP's compliance filing consistent with the Commission's past rulings; (2) is the Commission's acceptance of LADWP's compliance filing supported by substantial evidence in the record of this proceeding; (3) is the Commission's acceptance of LADWP's compliance filing arbitrary and capricious and not based on reasoned decision making; (4) did the Commission fail to consider arguments propounded by the California Parties in their responsive filings.

6. In the body of their rehearing request, the California Parties argue that the Commission erred in its decision-making in accepting the LADWP's compliance filing. In the alternative, the California Parties contend that the Commission should have required the LADWP to correct its previously submitted emissions costs offset calculations in compliance with the Commission's requirements. Specifically, the California Parties believe that the LADWP's emissions costs offset claim is overstated because it fails to properly take into account its complete portfolio of sales transactions in the apportionment of the LADWP's emissions costs. The California Parties raise a concern that by artificially ignoring portions of its sales portfolio, the LADWP allocates more emission costs to the CAISO and California Power Exchange (PX) mitigated sales than is just and reasonable. In the California Parties' opinion, the LADWP should have allocated emissions costs to all wholesale sales regardless of the source instead of only to CAISO/PX mitigated sales.

7. The California Parties further state that a compliance filing by the City of Pasadena, California accepted in the September 20 Order correctly allocated emissions costs to all wholesale sales. According to the California Parties, the Commission has failed to explain why it accepted one approach in one filing and rejected the same approach when advocated by the California Parties in response to another.

8. The California Parties further contend that the LADWP has failed to provide data and work papers that would permit verification of its claimed \$8,630,834 in emissions costs. In the California Parties' opinion, the data and working papers accompanying the LADWP's compliance filings include multiple entries for each category of sales, and fail to provide explanation of what is contained in the various categories. The California Parties conclude that as a result, it is not possible to verify the LADWP's claimed emissions costs offset. Accordingly, the California Parties request that the Commission

No. 663-A, which, among other things, limited the requirement to include the statement of issues only to requests for rehearing. *See Revision of Rules of Practice and Procedure Regarding Issue Identification*, 114 FERC ¶ 61,284 (2006).

grant rehearing and reject LADWP's emissions costs offset compliance filing until the LADWP provides adequate data to support its claimed offset.

9. In addition, in a footnote to the background section of their rehearing request, the California Parties argue that the September 20 Order failed to address arguments included in their July 12, 2005 response to the LADWP's June 21, 2005 supplemental compliance filing.⁷

C. Commission Determination

10. The Statement of Issues included in the California Parties' rehearing request fails to include, as required by Order No. 663, representative Commission and/or court precedent on which the California Parties are relying. Moreover, Issue 1 in the Statement of Issues is not discussed in the body of the California Parties' request for rehearing. Without representative Commission and/or court precedent required to be included in the Statement of Issues and additional discussion in the body of the rehearing request, the Commission is in no position to discern the California Parties' position on Issue 1. For this reason, Issue 1 is hereby deemed to have been waived in accordance with Order No. 663. Accordingly, in this order we only address Issues 2, 3, and 4.

11. We also note that the California Parties submitted an errata to their original rehearing request to add to the Statement of Issues citations to representative precedent, as required by Order No. 663. However, we do not accept this errata because it was submitted 60 days after the expiration of the 30-day period for submitting rehearing requests.

12. On rehearing, the California Parties argue that the Commission acted arbitrarily and capriciously in accepting for filing the LADWP's emissions costs offset claim, which, in the California Parties' opinion, is overstated because the calculations do not take into account the purchased power transactions. The LADWP's emissions costs claim was examined by the Administrative Law Judge (ALJ) during the evidentiary hearing.⁸ The ALJ found that the LADWP incurred demonstrable emissions costs during the Refund Period and accepted the LADWP's emissions costs offset claim with modification. Specifically, the ALJ required that the LADWP's zero-cost RTCs, that were retained in years 2000 and 2001 and not used for native load customers, be factored into the per-unit costs applied in its emissions costs analysis.⁹ The Commission affirmed the ALJ's finding regarding the LADWP's emissions costs offset claim. In addition, the

⁷ See California Parties' Request for Rehearing, at 6 n. 15.

⁸ See *San Diego Gas and Electric Company*, 96 FERC ¶ 61,120, at 61,519 (2001).

⁹ See *San Diego Gas and Electric Company*, 101 FERC ¶ 63,026, at P 753-757 (2002) (*Initial Decision*).

Commission allowed the LADWP to include in the emissions costs offset the SCAQMD-assessed civil penalty.¹⁰ Subsequently, the Commission reaffirmed its findings on the LADWP's emissions costs claim in the rehearing order.¹¹ The purpose of the LADWP's filing was to bring the previously submitted emissions costs offset calculations in compliance with the directives in the March 26 and October 16 Orders. As we found in the September 20 Order and reiterate here, the LADWP's filing is in compliance with the Commission's directives. The Commission required the LADWP only to recalculate its per-unit emissions costs to include RTCs not used for native load and the SCAQMD's penalty and to account for emissions costs incurred only in mitigated intervals. The LADWP's compliance filing satisfied all of these directives.

13. Moreover, in the September 20 Order, we addressed the emissions costs apportionment issue, as raised again on rehearing by the California Parties. Specifically, the Commission stated that:

[w]e disagree with the California Parties' contention that purchased power transactions should be included in the apportionment of emissions costs between CAISO sales and non-CAISO sales. The California Parties' proposal to include purchased power transactions in the apportionment would inappropriately assign emissions costs to transactions for which LADWP did not incur emissions costs. We find that assigning emissions costs by the ratio of CAISO sales to all non-native load sales made from LADWP's own generation resources corresponds to the emissions costs that were actually incurred by LADWP. Thus, it is inappropriate to include purchased power transactions in the allocation of emissions costs.¹²

The California Parties have not proffered any new arguments on the purchase power transactions issue that would persuade the Commission to reconsider our determination in the September 20 Order. Accordingly, we deny California Parties request for rehearing on this point.

14. Furthermore, we find that the California Parties' contention that the LADWP's compliance filing is insufficiently supported is misplaced. The California Parties do not dispute the fact that the LADWP provided sufficient explanation of how it applied the

¹⁰ See March 26 Order at P 111-113.

¹¹ See October 16 Order at 146-148.

¹² September 20 Order at P 35.

Commission's directives in revising its emissions costs offset calculations.¹³ Instead, in support of their contention, the California Parties state that their expert Dr. Berry was unable to corroborate the volumes of "Other Wholesale Sales" reported in the LADWP's work papers and, as a result, could not confirm whether the LADWP reported wholesales sales made from purchased power.¹⁴ In its June 11, 2005 supplemental filing, the LADWP corrected the inadvertent assignment of emissions costs to purchased power transactions that were sold to the CAISO, and the Commission accepted that correction. Specifically, we found in the September 20 Order (and have reiterated above) that the LADWP was correct not to include purchased power transactions in the allocation of emissions costs. For these reasons, the LADWP was not required to provide further explanation with regard to purchased power transactions volumes. For this reason, we deny the California Parties' request for rehearing.

15. Finally, we disagree with the California Parties' contention that in the September 20 Order, the Commission failed to consider arguments included in the California Parties' July 12, 2005 responsive filing to the LADWP's June 21, 2005 supplemental compliance filing. The September 20 Order addressed the arguments raised by the California Parties in their July 12, 2005 filing but did not attribute them to a specific filing by the California Parties. The July 12, 2005 filing was an answer to LADWP's responsive filing to the California Parties' protest to the compliance filing and raised issues almost identical to the issues raised in the California Parties' April 14, 2005 protest and May 9, 2005 supplemental comments. Specifically, in the July 12, 2005 filing, the California Parties raised three main issues: (1) LADWP's failure to include purchased power transactions in its apportionment of emissions costs; (2) the lack of supporting paperwork for LADWP's emissions costs offset claim; and (3) the need to adopt a uniform template for emissions costs offset claims. These issues were addressed in the September 20 Order, in paragraphs 35, 36, and 38, respectively. Moreover, in this order we have elaborated our position and reasoning for the determinations made in regard to these issues. For these reasons, we find the California Parties' contention to be without merit and deny their request for rehearing.

¹³ As we stated in the September 20 Order, "[t]he purpose of the [compliance] filings is to bring the previously submitted emissions costs offset claims in compliance with the Commission's directives issued subsequently to the completion of the hearing." *See* September 20 Order at P 36.

¹⁴ The California Parties incorporate by reference its May 9, 2005 Supplemental Comments, Docket No. EL00-95-073, Berry Affidavit at 13 and 16. *See* the California Parties' Request for Rehearing, at 10.

II. Clarification in Response to the CAISO's Status Report

A. Background

16. Through an Order dated February 3, 2004, the Commission required the CAISO to submit a monthly status report detailing “the status of the preparatory adjustment re-runs and the date that it expects to complete both the preparatory re-runs and the settlements and billing process for calculating refunds.”¹⁵ To date, the CAISO has submitted twenty four status reports providing ongoing information regarding, among other things, the varying stages of completion of the refund process, an estimated time frame for completion of the refund calculations, and any issues on which the CAISO feels it needs guidance from the Commission to complete the refund calculations. Specifically related to the emissions costs offsets at issue in this order, the CAISO requests guidance from the Commission as to how it should allocate the emissions costs offsets to market participants.

17. Beginning with its eighteenth status report to the Commission, the CAISO has been informing the Commission that it intends to allocate the emissions costs offsets accepted by the Commission only to control area gross load and only during mitigated intervals, rather than to all control area gross load during the Refund Period.¹⁶ The CAISO reasons that allocating the approved emissions costs offsets in this fashion is the most appropriate allocation methodology given that emissions costs offsets were only available for mitigated intervals. The CAISO further states that rather than waiting for a Commission determination on the allocation issue, it intends to perform its emissions costs offsets allocation calculations using both methodologies -- to all control area gross load and only to control area gross load in mitigated intervals. The CAISO will then present both sets of calculations to market participants to review. The CAISO states that it will nevertheless require a Commission ruling on the appropriate allocation method prior to beginning its interest calculations.

¹⁵ *California Independent System Operator*, 106 FERC ¶ 61,099 (2004).

¹⁶ *See, e.g.*, the CAISO's Eighteenth Status Report, Docket No. ER03-746-000, at 4-5, July 22, 2005; the CAISO's Twenty-Second Status Report, Docket No. ER03-746-000, at 6-8, November 10, 2005; the CAISO's Twenty-Fourth Status Report, Docket No. ER03-746-000, at 7-8, January 10, 2006.

18. Reliant filed comments opposing the CAISO's allocation methodology.¹⁷ Specific to emissions cost offsets, Reliant claims that the CAISO's proposed allocation methodology is incorrect for two reasons. First, Reliant contends that the CAISO failed to take into account the soft cap that was in place during the Refund Period. According to Reliant, under the soft cap, sellers may have been paid prices in excess of the historical market clearing price, with those higher prices potentially mitigated. Thus, it claims, the proper reference is not the historic market clearing price, but rather the historical transaction price or the highest historical transaction price. Second, Reliant asserts that the CAISO misstates the description of a mitigated interval.

19. In its Twenty-Fifth Status Report submitted on February 14, 2006, the CAISO states that upon further consideration, it has concluded that the best course of action would be to simply allocate emissions costs to all control area gross load during the Refund Period, regardless of whether that load occurred during a mitigated interval.

B. Commission Determination

20. The Commission determined early in the California refund proceeding that emissions costs should be shared by all loads in California. In its determination that emissions costs are a legitimate cost of producing energy, the Commission found that because all customers within California benefit from cleaner air as a result of emissions fees, all load should be assessed emissions costs.¹⁸ In subsequent orders, the Commission reaffirmed this finding.¹⁹

21. Consistent with our previous orders and in order to avoid future confusion, we clarify that emissions costs offsets should be allocated to all control area gross load during the Refund Period. We reiterate that this allocation methodology appropriately

¹⁷ The CAISO states that the California Parties "filed comments in which they disputed the ISO's proposal, arguing that allocation emission costs to all Gross Load was most appropriate, give the Commission's orders addressing this issue." See the CAISO's Twenty-Second Status Report, at 7-8. The California Parties' August 8, 2005 comments were directed to allocation of the cost offsets. As a result, their comments are not discussed in this order.

¹⁸ *San Diego Gas & Electric Company v. Sellers of Energy and Ancillary Services*, 95 FERC ¶ 61,418 (2001).

¹⁹ See *San Diego Gas & Electric Company v. Sellers of Energy and Ancillary Services*, 97 FERC ¶ 61,293, at 62,370 (2001); *San Diego Gas & Electric Company v. Sellers of Energy and Ancillary Services*, 102 FERC ¶ 61,317, at P 122 (2003); *San Diego Gas & Electric Company v. Sellers of Energy and Ancillary Services*, 105 FERC ¶ 61,066, at P 158 (2003); *San Diego Gas & Electric Company v. Seller of Energy and Ancillary Services*, 107 FERC ¶ 61,166, at P 62 (2004).

assigns costs to beneficiaries of emissions fees. Accordingly, we will not address Reliant's contention that the CAISO incorrectly defines a mitigated interval, as it is not relevant.

The Commission orders:

(A) The California Parties' request for rehearing is hereby denied for the reasons stated in the body of this order.

(B) Clarification on the emissions costs offsets allocation methodology is hereby provided, as discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.